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Name of applicant, assignee or registered representative

/FRANK C. NICHOLAS/  
Signature

November 26, 2007  
Date of Signature

PATENT  
**Case No. AUS920010540US1**  
(9000/51)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:	)	
	)	
CARL P. GUSLER, ET. AL.	)	Examiner: JACOBS, LASHONDA
	)	
Serial No.: 09/935,396	)	
	)	Group Art Unit: 2157
Filed: AUGUST 23, 2001	)	
	)	Conf. No. 9829
Title: METHOD AND SYSTEM FOR	)	
AUTOMATED PROJECT	)	
ACCOUNTABILITY	)	

**REPLY BRIEF**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants herewith respectfully present their reply brief as follows:

The Examiner continues to mistake the teachings of *Frye* in view of *Helzerman*. In fact, the references, alone or together, do not teach each element of the claims. The Board must be careful to note that this is not a so-called TSM argument, and instead, the Board should note that the references do not teach each claimed element.

It is axiomatic, and the Supreme Court affirmed in KSR, that obviousness requires that each claimed element be taught or suggested in the references. Here, however, *Frye* in view of *Helzerman* does not teach, and in fact, teaches away from the claimed elements “determining a readiness category for the decision maker” and “providing a readiness category rating for the readiness category” as recited in claims 1, 9, and 16.

The Examiner’s arguments are unsupportable. First, the Examiner cites to the specification rather than to the actual claim language in deciding to interpret the claimed element “determining a readiness category for the decision maker” as determining a readiness category of a project for the decision maker’s use. Such an interpretation is improper and fails to consider the plain meaning of the claimed term. Arbitrarily conflating the “decision maker” and the “project” is an untenable construction. Similarly, the Examiner’s interpretation of “providing a readiness category rating for the readiness category” as meaning providing a number to show that the first phase of the project is complete and “read” (sic) for the next phase is unsupportable as well. The claimed elements mean what they say – and the Examiner’s misplaced efforts to cast the claimed elements as something entirely different cannot support a rejection of these claims.

The Board must consider the claimed terms and not that the readiness category is claimed as for the decision maker, rather than for the project itself. Thus, actual progress of the project is not addressed in this particular claim limitation, and the readiness category is for the decision maker. This flaw is especially highlighted by, for example claim 6, which specifically claims “*determining the project readiness*” (emphasis added). Under the Examiner’s untenable interpretation, this element of claim 6 would be rendered essentially nugatory.

With respect to claims 2, 10, and 17, *Frye* in view of *Helzerman* does not teach or suggest “assigning vote weighting to the decision maker.” The Examiner correctly notes the failure of *Frye* to teach such a claim element, but the Examiner’s citation to column 2 lines 48-63 and column 4 lines 41-64 of *Helzerman* is misplaced. *Helzerman* does not disclose the claimed element. At most, *Helzerman* teaches a decision maker, but does not teach or suggest that the decision maker should have vote weighting. The Examiner’s assertion that merely teaching that “project leaders are selected for managing the project, which may include making decisions, determining if the project is read to begin and setting milestones for each phase of the project” teaches “assigning vote weighting” is utterly misplaced.

Further, claims 2-8, 10-15, and 17-22 depend directly or indirectly from claims 1, 9, or 16 respectively, and are therefore patentable over the prior art for at least the same reasons.

#### **SUMMARY**

The Appellants respectfully request maintenance of their appeal, and submit that claims 1-22 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

Dated: **November 26, 2007**

Respectfully submitted,  
CARL P. GUSLER, *et al.*

/FRANK C. NICHOLAS/

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